

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

CHAPTER 13
HOLDING COMPANIES

500.1301 Insurance holding companies; definitions.

Sec. 1301. As used in this chapter:

(a) "Enterprise risk" means an activity, circumstance, event, or series of events involving 1 or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect on the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer to be hazardous to policyholders, creditors, and the public.

(b) "Insurer" means that term as defined in section 106 and includes a nonprofit dental care corporation operating under 1963 PA 125, MCL 550.351 to 550.373. Insurer does not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the commonwealth of Puerto Rico, the District of Columbia or a state or political subdivision of a state, fraternal benefit societies, or nonprofit health care corporations.

(c) "NAIC" means the National Association of Insurance Commissioners.

(d) "Person" means that term as defined in section 114, except that it does not include a securities broker performing no more than the usual and customary broker's function, so long as the securities broker holds less than 10% of the voting securities of an insurer or of any person that controls an insurer.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992;—Am. 2015, Act 244, Imd. Eff. Dec. 22, 2015.

Popular name: Act 218

500.1305 Domestic insurers; organization or acquisition of subsidiaries; book of business; value; admitted asset; limitation; amortization; annual test; definition; authority of commissioner.

Sec. 1305. (1) A domestic insurer, either by itself or in cooperation with 1 or more persons, may organize or acquire 1 or more subsidiaries if consistent with other provisions of this act. These subsidiaries may conduct any kind of business and their authority to do so shall not be limited by reason of the fact that they are subsidiaries of a domestic insurer. This provision shall not be construed to provide authority for conduct or activities by these subsidiaries that would otherwise be inconsistent with other provisions of this act.

(2) Except as otherwise provided in subsection (3), if a domestic insurer acquires through a business acquisition or a reinsurance transaction a book of business that includes life insurance or other business written by a life insurance company, and the book of business has a readily determinable market value represented by the present value of the future after-tax profits that will be earned on the book of business in force at the date of the acquisition, the value of the book of business acquired, above any amount previously recognized as an admitted asset under this section or that may be permitted under accounting practices and procedures designated by the commissioner under section 438, may be recognized with the prior approval of the commissioner as an admitted asset in the annual statement filed pursuant to section 438. The commissioner shall make a determination regarding the admissibility of this asset within 60 days after receiving a filing with supporting documentation, in a form satisfactory to the commissioner, from the domestic insurer requesting such approval.

(3) Notwithstanding subsection (2), a domestic insurer may recognize as an admitted asset in the annual statement filed pursuant to section 438 the value of a book of business described in subsection (2) without the prior approval of the commissioner, if the domestic insurer files a written notice with the commissioner of its intent to record the value of the book of business acquired as an admitted asset and provides a certification by an officer of the domestic insurer that, as of the date of the notice, the domestic insurer meets all of the following criteria:

(a) The insurer's most recent a.m. best financial rating is at least an "A".

(b) The insurer has at least 1 additional rating of at least an "A" or its equivalent, as assigned by a rating organization included on the national association of insurance commissioners' list of nationally recognized statistical organizations and approved by the commissioner.

(c) Following the acquisition or reinsurance transaction, the insurer will possess a minimum capital and surplus of at least \$1,000,000,000.00, excluding from the insurer's capital and surplus the pro forma effect of the total value of the book of business to be recognized as an admitted asset by the domestic insurer.

(d) The insurer's total adjusted risk based capital exceeds 5 times the company's authorized control level risk based capital.

(e) The insurer's certificate of authority has not been suspended, revoked, or limited under section 436 at any time during the 5-year period immediately preceding the acquisition or reinsurance transaction.

(f) The insurer is not subject to an analyst team system level A or B designation by the national association of insurance commissioners for the year immediately preceding the acquisition or reinsurance transaction.

(g) Following the acquisition or reinsurance transaction, the insurer will meet the asset requirement under section 901.

(4) The value of the book of business acquired as described in subsection (2) that a domestic insurer may recognize as an admitted asset shall not exceed the lesser of 50% of capital and surplus or the following:

(a) Twenty percent of that adjusted capital and surplus that is less than or equal to 500% of authorized control level risk based capital, plus

(b) Eighty-five percent of that adjusted capital and surplus that is greater than 500%, but less than or equal to 600%, of authorized control level risk based capital, plus

(c) Ninety-five percent of that adjusted capital and surplus that is greater than 600%, but less than or equal to 700%, of authorized control level risk based capital, plus

(d) One hundred percent of that adjusted capital and surplus that is greater than 700% of authorized control level risk based capital.

(5) The value of the book of business acquired as described in subsection (2) shall be amortized pursuant to accounting practices and procedures designated by the commissioner under section 438. The value of the book of business acquired in excess of the amount allowable under this section shall not be an admitted asset in the annual statement filed pursuant to section 438.

(6) A domestic insurer that recognizes as an admitted asset in the annual statement filed pursuant to section 438 any value of business acquired shall annually test the value of the asset for impairment as part of the asset adequacy testing and shall reference this testing in the opinion filed under section 830a.

(7) As used in subsection (4), "adjusted capital and surplus" means capital and surplus as of December 31 of the immediately preceding year, adjusted to exclude any net positive goodwill exclusive of any component of the goodwill relating to the existing value of the book of business acquired, electronic data processing equipment, operating system software, and net deferred tax assets.

(8) Nothing in this section shall be construed to limit the commissioner's authority under sections 436 and 436a.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992;—Am. 2006, Act 55, Imd. Eff. Mar. 9, 2006.

Popular name: Act 218

500.1311 Merging with or acquiring control of domestic insurer; statement; filing confidential notice of proposed divestiture; notice by person proposing to merge or acquire control of domestic insurer; "domestic insurer" explained.

Sec. 1311. (1) A person other than the issuer shall not make a tender offer for or a request or invitation for tenders of, or enter into an agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, a voting security of a domestic insurer if, after the consummation thereof, the person directly or indirectly, or by conversion or by exercise of a right to acquire, would be in control of the insurer. A person shall not enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time an offer, request, or invitation is made or an agreement is entered into, or before the acquisition of the securities if no offer or agreement is involved, the person has filed with the director and has sent to the insurer, which has sent to its shareholders, a statement containing the information required by this chapter and the offer, request, invitation, agreement, or acquisition has been approved by the director in the manner prescribed in this chapter.

(2) If a person has not filed a statement under subsection (1), a controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer, in any manner, shall file with the director, with a copy to the insurer, a confidential notice of its proposed divestiture at least 30 days before the cessation of control. The director shall determine those instances in which the person or persons seeking to divest or to acquire a controlling interest in an insurer are required to file to obtain approval of the transaction. The information must remain confidential until the conclusion of the transaction unless the director determines that confidential treatment will interfere with enforcement of this section.

(3) The person who proposes to enter into an agreement to merge with or otherwise acquire control of a domestic insurer shall file a notice with the director, in a form and containing the information prescribed by applicable rule promulgated or order issued by the director.

(4) For purposes of this section and sections 1312 to 1319, a domestic insurer includes a person controlling a domestic insurer and any foreign insurer whose written insurance premium in this state for each of the most recent 3 years exceeds the premiums written in its state of domicile and whose written premium in this state was 20% or more of its total written premium in each of the most recent 3 years.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1990, Act 85, Imd. Eff. May 29, 1990;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992;—Am. 1994, Act 227, Imd. Eff. June 27, 1994;—Am. 2010, Act 61, Imd. Eff. Apr. 30, 2010;—Am. 2015, Act 244, Imd. Eff. Dec. 22, 2015.

Popular name: Act 218

500.1312 Statement filed with director; contents; duties.

Sec. 1312. (1) The statement filed with the director under section 1311(1) shall be made under oath or affirmation and must contain all of the following information:

(a) The name and address of each person by whom or on whose behalf the merger or other acquisition of control described in section 1311 will be effected, hereinafter referred to in this section and section 1315 as the acquiring party. If the person is an individual, his or her principal occupation, all offices and positions held during the past 5 years, any civil judgments against the person for \$25,000.00 or more in civil fines or penalties or injunctive or other equitable relief, and any conviction of crimes other than minor traffic violations during the past 10 years. If the person is not an individual, a report of the nature of its business operations during the past 5 years or for a lesser period in which the person and any predecessors of the person have been in existence, an informative description of the business intended to be done by the person and the person's subsidiaries, and a list of all individuals who are or who have been selected to become directors or executive officers of the person or who perform or will perform functions appropriate to those positions. The list must include for each individual the individual's principal occupation, all offices and positions held during the past 5 years, any civil judgments against the person for \$25,000.00 or more in civil fines or penalties or injunctive or other equitable relief, and any conviction of crimes other than minor traffic violations during the past 10 years.

(b) The source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction in which funds were or are to be obtained for the merger or other acquisition, including any pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing the consideration. If a source of the consideration is a loan made in the lender's ordinary course of business, the identity of the lender must be disclosed but remain confidential if the person filing the statement so requests.

(c) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding 5 fiscal years or for a lesser period in which the acquiring party and any predecessors of the acquiring party have been in existence and similar unaudited information as of a date not earlier than 90 days before the filing of the statement.

(d) Any plans or proposals that each acquiring party may have under consideration concerning the insurer's business operations, including, but not limited to, plans or proposals to liquidate the insurer, to sell its assets, to merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.

(e) The number of shares of any security described in section 1311 that each acquiring party proposes to acquire, the terms of the offer, request, invitation, agreement, or acquisition described in section 1311, and a statement as to how the proposal's fairness was arrived at.

(f) The amount of each class of a security described in section 1311 that is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

(g) A full description of a contract, arrangement, or understanding concerning a security described in section 1311 in which an acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description must identify the persons with whom the contracts, arrangements, or understandings have been entered into.

(h) A description of the purchase of a security described in section 1311 during the 12 calendar months preceding the filing of the statement, by an acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid for the security.

(i) A description of a recommendation to purchase a security described in section 1311 made during the 12 calendar months preceding the filing of the statement, by an acquiring party or by another person based upon interviews or at the suggestion of the acquiring party.

(j) Copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and

agreements to acquire or exchange a security described in section 1311 and additional related distributed soliciting material.

(k) The terms of an agreement, contract, or understanding made with or proposed to be made with a broker-dealer as to solicitation of securities described in section 1311 for tender, and the amount of a fee, commission, or other compensation to be paid to a broker-dealer.

(l) Additional information that the director prescribes by order or rule as necessary or appropriate for the protection of the insurer's policyholders and securityholders or in the public interest.

(2) A person required to file the statement described in section 1311 shall do all of the following:

(a) File the annual enterprise risk report under section 1325a, for as long as control exists.

(b) Provide, and ensure that all subsidiaries within its control in the insurance holding company system will provide, information to the director on request as necessary to evaluate enterprise risk to the insurer.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992;—Am. 2015, Act 244, Imd. Eff. Dec. 22, 2015.

Popular name: Act 218

500.1313 Partnership, syndicate or other group; statement filed with commissioner, amendment.

Sec. 1313. (1) If the person required to file the statement referred to in section 1311 is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information required by section 1312 shall be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group and each person who controls a partner or member. If any partner, member or person is a corporation or the person required to file the statement referred to in section 1311 is a corporation, the commissioner may require that the information required by section 1312 shall be given with respect to the corporation, each officer and director of the corporation and each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of the corporation.

(2) If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to the insurer pursuant to section 1311, an amendment setting forth the change, together with copies of all documents and other material relevant to the change, shall be filed with the commissioner and sent to the insurer within 2 business days after the person learns of the change. The insurer shall send the amendment to its shareholders.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970.

Popular name: Act 218

500.1314 Alternative filing materials.

Sec. 1314. If any offer, request, invitation, agreement or acquisition referred to in section 1311 is proposed to be made by means of a registration statement under the securities act of 1933 or in circumstances requiring the disclosure of similar information under the securities exchange act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in section 1311 may utilize such documents in furnishing the information called for by that statement.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970.

Popular name: Act 218

500.1315 Merger or acquisition of control; approval by director; public hearing; determination; contested case hearing.

Sec. 1315. (1) The director shall approve a merger or other acquisition of control described in section 1311 of a domestic insurer unless the director determines from information furnished to the director on the merger or other acquisition of control 1 or more of the following:

(a) After the change of control, the domestic insurer described in section 1311 would not be able to satisfy the requirements for the issuance of a certificate of authority to write the types of insurance for which it is presently authorized.

(b) The merger or other acquisition of control would substantially lessen competition in insurance in this state or tend to create a monopoly in this state.

(c) The financial condition of an acquiring party might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders or the interests of a remaining securityholder who is unaffiliated with the acquiring party.

(d) The terms of the offer, request, invitation, agreement, or acquisition described in section 1311 are unfair and unreasonable to the insurer's policyholders or securityholders.

(e) The acquiring party's plan or proposal to liquidate the insurer, sell its assets, consolidate or merge the

insurer with a person, or to make any other material change in its business or corporate structure or management, is unfair and unreasonable to the insurer's policyholders, and not in the public interest.

(f) The competence, experience, and integrity of the persons who would control the operation of the insurer are such that it would not be in the interest of the insurer's policyholders or the general public to permit the merger or other acquisition of control.

(g) The acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

(2) The director may hold a public hearing to receive evidence and to hear parties affected by the merger or acquisition. A hearing under this subsection must be held within 30 days after the filing of a statement under section 1311. The director shall provide notice of the hearing to the person filing the statement at least 20 days before the hearing. Not less than 7 days' notice of the public hearing shall be given by the person filing the statement to the insurer and to any other persons designated by the director. If the proposed acquisition of control will require the approval of more than 1 insurance commissioner, the public hearing may be held on a consolidated basis on request of the person filing the statement or as determined by the director. The director may opt out of a consolidated hearing and shall provide notice to the person who filed the statement under section 1311 of the opt-out within 10 days after the receipt of the statement required by section 1311. A hearing conducted on a consolidated basis must be held within the United States before the commissioners of the states in which the insurers are domiciled.

(3) In connection with a change of control of a domestic insurer, a determination by the director that the person acquiring control of the insurer shall be required to maintain or restore the capital of the insurer to the level required by this act shall be made not later than 60 days after the date of notification of the change of control submitted under section 1311.

(4) A person aggrieved by the director's order under this section is entitled to a contested case hearing before the director under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The director shall make a final decision within 30 days after the conclusion of the hearing.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992;—Am. 2015, Act 244, Imd. Eff. Dec. 22, 2015.

Popular name: Act 218

500.1316 Information to shareholders; expense; bond; examination or investigation.

Sec. 1316. All statements, amendments, or other material filed pursuant to section 1311 or 1312 and all notices of hearings held pursuant to section 1315, shall be mailed by the insurer to its shareholders within 5 business days after the insurer has received them. The expenses of mailing shall be borne by the person making the filing. As security for the payment of the expenses, the person shall file with the commissioner an acceptable bond or other deposit in an amount to be determined by the commissioner. At the acquiring party's expense, the commissioner may conduct such examination or investigation as the commissioner is empowered to do under section 224.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992.

Popular name: Act 218

500.1317 Exemptions.

Sec. 1317. The provisions of sections 1311 to 1319 do not apply to:

(a) Any transaction subject to the provisions of chapter 76.

(b) Any offer, request, invitation, agreement, or acquisition that the commissioner by order exempts as not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer or as otherwise not comprehended within the purposes of sections 1311 to 1319.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992.

Popular name: Act 218

500.1318 Violations.

Sec. 1318. The following are violations of sections 1311 to 1319:

(a) Failure to file any statement, amendment or other material required to be filed pursuant to sections 1311 or 1312.

(b) The effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner has given his approval.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970.

Popular name: Act 218

500.1319 Jurisdiction of actions arising out of violations; consent to process.

Sec. 1319. The courts of this state have jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files or fails to file a statement with the commissioner as required by this chapter and over all actions involving the person arising out of violations of sections 1311 to 1318. Each such person shall be considered to have performed acts equivalent to and constituting an appointment by him or her of the commissioner to be his or her true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of this section. Copies of all lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to the person at his or her last known address.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992.

Popular name: Act 218

500.1324 Insurers subject to registration; time.

Sec. 1324. An insurer that is a member of an insurance holding company system and is authorized to do business in this state shall register with the commissioner. A foreign insurer is not required to register if it is subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile that are substantially similar to those contained in this section and sections 1325 to 1343 and that exempt insurers domiciled in this state from the requirements of registration or that permit insurers domiciled in this state to satisfy the registration requirement by filing copies of materials required to be filed under this chapter. An insurer subject to registration under this chapter shall register by May 1 of each year for the immediately preceding calendar year unless the commissioner for good cause shown extends the time for registration. The commissioner may require an authorized insurer that is a member of a holding company system not subject to registration under this section to furnish a copy of the registration statement or other information filed by the insurer with the insurance regulatory authority of domiciliary jurisdiction.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1990, Act 85, Imd. Eff. May 29, 1990;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992.

Popular name: Act 218

500.1325 Registration statement; form; contents; other reports or information required.

Sec. 1325. (1) An insurer subject to registration under section 1324 shall file a registration statement on a form provided by the director containing the following current information:

(a) The capital structure, comprehensive financial condition, ownership, and management of the insurer and a person controlling the insurer.

(b) The identity and relationship of every member of the insurance holding company system.

(c) The following agreements in force, relationships subsisting, and transactions currently outstanding or that have occurred during the last calendar year between the insurer and its affiliates:

(i) Loans, other investments or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates.

(ii) Purchases, sales, or exchanges of assets.

(iii) Transactions not in the ordinary course of business.

(iv) Guarantees or undertakings for the benefit of an affiliate that result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business.

(v) All management and service contracts and all cost sharing arrangements.

(vi) Reinsurance agreements.

(vii) Dividends and other distributions to shareholders.

(viii) Consolidated tax allocation agreements.

(d) A pledge of the insurer's stock, including stock of a subsidiary or controlling affiliate for a loan made to a member of the insurance holding system.

(e) A summary outlining all items in the current registration statement representing changes from the prior registration statement.

(f) Other matters concerning transactions between registered insurers and any affiliates as included in any registration forms adopted or approved by the director.

(g) Statements that the insurer's board of directors oversees corporate governance and internal controls and that the insurer's officers and senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures.

(2) If a person ultimately controlling the insurer or intermediately controlling the insurer is registered on a national stock exchange or is otherwise required to make periodic reports to the United States Securities and Exchange Commission or other instrumentality of a state or the government of the United States or of a

foreign nation or jurisdiction regulating the financial conduct of that person, the insurer shall file the reports with the director in addition to other information required by the director. If requested by the director, the insurer must include financial statements of or within an insurance holding company system, including all affiliates. The insurer may satisfy the request by providing the director the most recently filed parent corporation financial statements that have been filed with the United States Securities and Exchange Commission.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992;—Am. 1994, Act 227, Imd. Eff. June 27, 1994;—Am. 2015, Act 244, Imd. Eff. Dec. 22, 2015.

Popular name: Act 218

500.1325a Annual enterprise risk report.

Sec. 1325a. (1) Except as otherwise provided in subsection (2), the ultimate controlling person of an insurer subject to registration under section 1324 shall file an annual enterprise risk report with the director or a jurisdiction designated by the director. The report must be appropriate to the nature, scale, and complexity of the operations of the insurance holding company system and must, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report is not subject to subpoena or discovery, is not admissible in evidence in a private civil or administrative action, and is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. The ultimate controlling person of an insurer subject to registration under section 1324 may request an exemption from this section. The ultimate controlling person of the insurer shall file with the director a written statement discussing the reasons why the ultimate controlling person of the insurer should be exempt. The director may grant the exemption if after review of the statement the director finds that compliance with this section would create an undue financial or organizational hardship on the ultimate controlling person.

(2) The ultimate controlling person of an insurance holding company system subject to registration under section 1324 that meets the requirements of this subsection on or before the effective date of the amendatory act that added this section is not required to file an annual enterprise risk report under subsection (1) if all of the following requirements are met:

(a) The ultimate controlling person is exempt from taxation under section 501(c)(5) of the internal revenue code of 1986, 26 USC 501.

(b) The ultimate controlling person was organized under the laws of this state before January 1, 1921.

(c) The director has not approved the controlling person's petition for disclaimer of affiliation or has disallowed a disclaimer of affiliation under section 1332.

(d) The insurer in which the ultimate controlling person owns a controlling interest meets both of the following requirements:

(i) Is registered under section 1324.

(ii) Is a wholly domestic insurer with no more than 10% of its written premium covering risks outside of this state and has not issued policies directly insuring any risk located outside of this state.

History: Add. 2015, Act 244, Imd. Eff. Dec. 22, 2015.

Popular name: Act 218

500.1326 Registration statement; nonmaterial information not disclosed.

Sec. 1326. No information need be disclosed on the registration statement filed pursuant to section 1325 if the information is not material for the purposes of sections 1324 to 1343 inclusive. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit or investments, involving 1/2 of 1% or less of an insurer's admitted assets as of December 31 next preceding are not material for purposes of sections 1324 to 1343 inclusive.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970.

Popular name: Act 218

500.1327 Registration statement; reporting material changes or additions and distributions to shareholders.

Sec. 1327. Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within 15 days after the end of the month in which it learns of each change or addition. Subject to section 1343, each registered insurer shall report all dividends and other distributions to shareholders within 2 business days following the declaration.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992.

Popular name: Act 218

500.1328 Registration; termination.

Sec. 1328. The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970.

Popular name: Act 218

500.1329 Consolidated registration statements.

Sec. 1329. The commissioner may require or allow 2 or more affiliated insurers subject to registration to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970.

Popular name: Act 218

500.1330 Registration on behalf of affiliated insurer.

Sec. 1330. The commissioner may allow an insurer authorized to do business in this state which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under section 1324 and to file all information and material required to be filed under this chapter.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970.

Popular name: Act 218

500.1331 Exemptions.

Sec. 1331. The provisions of sections 1324 to 1333 shall not apply to any insurer, information or transaction if and to the extent that the commissioner by rule or order exempts the insurer.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970.

Popular name: Act 218

500.1332 Petition for disclaimer of affiliation; filing; contents; effect; disallowance.

Sec. 1332. Any person may file with the commissioner a petition for disclaimer of affiliation with an authorized insurer or an insurer or any member of an insurance holding company system may file such a petition for disclaimer. The petition for disclaimer shall fully disclose all material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation and shall be subject to approval by the commissioner. The burden of proof for establishing that an affiliation does not exist shall rest with the petitioner. After a petition for disclaimer is filed with and approved by the commissioner, the insurer is relieved of any duty to register or report under this chapter that may arise out of the insurer's relationship with the person unless the commissioner subsequently disallows the disclaimer. The commissioner may disallow a disclaimer that has been previously approved only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1994, Act 227, Imd. Eff. June 27, 1994.

Popular name: Act 218

500.1333 Registration statement; failure to file.

Sec. 1333. The failure to file a registration statement, an amendment to or summary of the registration statement, or an enterprise risk report required by sections 1324 to 1332 within the time specified for the filing is a violation of this chapter.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 2015, Act 244, Imd. Eff. Dec. 22, 2015.

Popular name: Act 218

500.1334 Person subject to registration; providing information to insurer.

Sec. 1334. A person within an insurance holding company system subject to registration is required to provide complete and accurate information to an insurer if the information is reasonably necessary to enable the insurer to comply with the provisions of this chapter.

History: Add. 1992, Act 182, Imd. Eff. Oct. 1, 1992.

Popular name: Act 218

500.1341 Transactions within holding company system; certain insurers as party; standards; prior approval; transactions entered into by domestic insurers; notification; separate

transactions; review by director; total investment exceeding 10% of corporation's voting securities.

Sec. 1341. (1) Transactions within a holding company system to which an insurer domiciled in this state or a foreign insurer whose written insurance premium in this state for each of the most recent 3 years exceeds the premiums written in its state of domicile and whose written premium in this state was 20% or more of its total written premium in each of the most recent 3 years is a party or with respect to which the assets or liabilities of these insurers are affected are subject to all of the following standards:

- (a) The terms must be fair and reasonable.
- (b) The charges or fees for services performed must be reasonable.
- (c) The expenses incurred and payment received must be allocated to the insurer in conformity with customary insurance accounting practices consistently applied.

(d) The books, accounts, and records of each party must be maintained to clearly and accurately disclose the precise nature and details of the transactions including necessary accounting information to support the reasonableness of the charges or fees to the respective parties.

(e) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates must be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs so that the insurer continues to comply with section 403.

(2) The director's prior approval is required for sales, purchases, exchanges, loans, extensions of credit, or investments, involving 5% or more of the insurer's assets at the immediately preceding year's end, between a domestic controlled insurer and a person in its holding company system.

(3) A domestic insurer and a person in its holding company system shall not enter into the following transactions with each other, or modify an existing transaction, unless the insurer notifies the director in writing of its intention to enter into the transaction, or its reason to modify an existing transaction and the modification's financial impact on the insurer, at least 30 days, or a shorter period as the director allows, before entering into or modifying the transaction and the director has not disapproved it within that period:

(a) A sale, purchase, exchange, loan, extension of credit, or investment, if the transaction is equal to or greater than the lesser of 3% of the insurer's assets or 25% of capital and surplus as of December 31 of the immediately preceding year.

(b) A loan or extension of credit to a person who is not an affiliate, if the insurer makes the loan or extends the credit with the agreement or understanding that the proceeds of the transaction, in whole or in substantial part, will be used to make a loan or extend credit to, to purchase an asset of, or to invest in, an affiliate of the insurer making the loan or extending credit if the transaction is equal to or greater than the lesser of 3% of the insurer's assets or 25% of capital and surplus as of December 31 of the immediately preceding year.

(c) A guarantee that is quantifiable and exceeds the lesser of 0.5% of the insurer's admitted assets or 10% of surplus as of December 31 of the immediately preceding year. A guarantee that is not quantifiable under this subdivision is subject to prior approval of the director.

(d) A direct or indirect acquisition of, or investment in, a person that controls the insurer or that controls an affiliate of the insurer, if the amount of the transaction plus the insurer's present holdings in investment exceeds 2.5% of surplus. This subdivision does not apply to a direct or indirect acquisition of, or investments in, a subsidiary acquired under section 1305 or any other section of this chapter, or a nonsubsidiary insurance affiliate that is subject to this act.

(e) A reinsurance treaty or agreement.

(f) Rendering of services on a regular systematic basis.

(g) A tax allocation agreement.

(h) A cost-sharing agreement.

(i) A material transaction, specified by regulation, that the director determines may adversely affect the interests of the insurer's policyholders.

(4) An insurer shall informally notify the director of a termination of transaction under subsection (3) no later than 30 days after the transaction terminates.

(5) Subsection (3) does not authorize or permit a transaction that, for an insurer that is not a member of the same holding company system, would be otherwise contrary to law.

(6) A domestic insurer shall not enter into transactions that are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the threshold amount under this chapter and thus avoid the review that would otherwise occur. If the director determines that the separate transactions were entered into over any relevant period for that purpose, he or she may exercise his or her authority under section 1371.

(7) In reviewing a transaction under subsection (2), the director shall consider whether the transaction

complies with the standards described in subsection (1) and whether it may otherwise adversely affect the interests of policyholders, creditors, or the public.

(8) A domestic insurer shall notify the director within 30 days of the domestic insurer's investment in any 1 corporation if the insurance holding company system's total investment in the corporation exceeds 10% of the corporation's voting securities.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992;—Am. 1994, Act 227, Imd. Eff. June 27, 1994;—Am. 1994, Act 443, Imd. Eff. Jan. 10, 1995;—Am. 2015, Act 244, Imd. Eff. Dec. 22, 2015.

Popular name: Act 218

500.1342 Application of MCL 500.436a.

Sec. 1342. In determining whether an insurer remains safe, reliable, and entitled to public confidence for the purposes of sections 1324 to 1343, the commissioner shall apply the standards of section 436a.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992.

Popular name: Act 218

500.1343 Ordinary shareholder dividends paid by domestic insurers; review by director; determination of reasonableness; factors; limiting or disallowing payment of shareholder dividends; declaration or payment from earned surplus; declaration of shareholder dividend by domestic insurer as member of insurance holding company system; extraordinary dividend or distribution to shareholders; hearing.

Sec. 1343. (1) Each year the director shall review the ordinary shareholder dividends paid by domestic insurers to determine whether each insurer's surplus following those dividends is reasonable in relation to the insurer's outstanding liabilities and adequate to its needs so that it continues to comply with section 403. In conducting the review and making the determination, the director shall consider all of the following factors in addition to factors listed in section 436a:

(a) The adequacy of the level of surplus as regards policyholders remaining after the dividend payment or payments.

(b) The quality of the insurer's earnings and the extent to which the reported earnings include extraordinary items, such as surplus relief reinsurance transactions and reserve destrengthening.

(c) The quality and liquidity of investments in subsidiaries. The director may discount any of those investments or refuse to consider the investment as an asset for purposes of determining the adequacy of surplus as regards policyholders if the investment so warrants.

(2) If the director determines that an insurer's surplus as regards policyholders is not reasonable in relation to the insurer's outstanding liabilities and is not adequate to its financial needs so that the insurer will not continue to comply with section 403, the director shall limit or disallow the payment of shareholder dividends.

(3) Shareholder dividends shall be declared or paid only from earned surplus, unless the director approves the dividend before payment. The director shall consider whether the dividend will be paid from the insurer's net gain from operations if the insurer is a life insurer, or the insurer's net income if the insurer is not a life insurer, for the 12-month period ending December 31 of the immediately preceding year. For purposes of this subsection, earned surplus excludes surplus arising from unrealized capital gains or a revaluation of assets.

(4) A domestic insurer that is a member of an insurance holding company system and declares a shareholder dividend shall report the dividend to the director within 5 business days after declaring the dividend. The insurer shall not pay the dividend until 10 days after the director receives a report under this subsection.

(5) An insurer subject to registration under section 1324 shall not pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until 30 days after the director has received notice of the declaration and has not disapproved or has approved the payment within that period. If the director, applying the criteria in subsection (1), determines that the insurer's surplus as regards policyholders is not reasonable in relation to the insurer's outstanding liabilities and is not adequate to its financial needs so that the insurer will not continue to comply with section 403, the director may, before the expiration of the 30-day period described in this subsection, enter an order prohibiting the payment of the dividend.

(6) An extraordinary dividend or distribution includes a dividend or distribution of cash or other property, whose fair market value plus the fair market value of other dividends or distributions made within the preceding 12 months exceeds the greater of 10% of the insurer's surplus as regards policyholders as of December 31 of the immediately preceding year, or the net gain from operations of the insurer, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, not including realized capital gains, for

the 12-month period ending December 31 of the immediately preceding year, but shall not include pro rata distributions of any class of the insurer's own securities.

(7) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution that is conditional on the director's approval. The declaration does not confer rights on shareholders until the director has approved or has not disapproved the payment of the dividend or distribution within the 30-day period described in subsection (5).

(8) Notwithstanding subsections (5) through (7), a dividend shall not be declared and paid by an insurer to an affiliate if after the payment the insurer could not satisfy the standards described in section 403.

(9) An insurer aggrieved by the director's determination or order under this section is entitled to a contested case hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. A hearing under this subsection must be held no later than 10 days after receipt of the insurer's request. The director's determination or order shall remain in effect except as modified by the director during the pendency of the hearing and until a final decision by the director. The director shall render a final decision within 30 days after the conclusion of the hearing.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992;—Am. 1994, Act 227, Imd. Eff. June 27, 1994;—Am. 1994, Act 443, Imd. Eff. Jan. 10, 1995;—Am. 1995, Act 219, Imd. Eff. Dec. 1, 1995;—Am. 2015, Act 244, Imd. Eff. Dec. 22, 2015.

Popular name: Act 218

500.1344 Officers and directors; obligation or liability; common management or cooperative or joint use of personnel, property, or services.

Sec. 1344. (1) Notwithstanding the control of a domestic insurer by any person, the insurer's officers and directors shall not be relieved of any obligation or liability to which they would otherwise be subject by law and the insurer shall be managed so as to assure its separate operating identity consistent with this act.

(2) Nothing in this section shall preclude a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property, or services with 1 or more other persons under arrangements meeting the standards of this act.

History: Add. 1992, Act 182, Imd. Eff. Oct. 1, 1992.

Popular name: Act 218

500.1351 Examination of insurer or affiliates; information; experts; expenses.

Sec. 1351. (1) Subject to the limitation in this section and in addition to the powers that the director has under chapters 2 and 4 relating to the examination of insurers, the director may order an insurer registered under section 1324 to produce records, books, or other information papers in the possession of the insurer or its affiliates as are necessary to determine the insurer's financial condition, including enterprise risk to the insurer by the ultimate controlling party, or by combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis, or legality of conduct. If the insurer fails to comply with the order, the director may examine the affiliates to obtain the information. The director may order an insurer registered under section 1324 to produce information not in the possession of the insurer if the insurer can obtain access to the information under a contractual relationship, statutory obligation, or other method. If the insurer cannot obtain the information requested by the director, the insurer shall provide the director with a detailed explanation of the reason that the insurer cannot obtain the information and the identity of the holder of information. If the director determines the detailed explanation is without merit, the director may require, after notice and hearing, the insurer to pay a civil fine of \$1,000.00 for each day's delay or may suspend or revoke the insurer's license.

(2) The director may retain at the registered insurer's expense attorneys, actuaries, accountants, and other experts not otherwise a part of the director's staff as are reasonably necessary to assist in the conduct of the examination under subsection (1). The expense of the attorneys, actuaries, accountants, and other experts shall be certified by the director and paid as provided in sections 216 and 224. The person retained is under the direction and control of the director and shall act in a purely advisory capacity.

(3) Each registered insurer producing for examination records, books, and papers under subsection (1) is liable for and shall pay the expense of the examination under sections 216 and 224.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992;—Am. 2015, Act 244, Imd. Eff. Dec. 22, 2015.

Popular name: Act 218

500.1355 Examination of insurer or affiliates; confidentiality of information; written consent; disclosure; notice; publication in interest of public; sharing documents, materials, or other

information with regulator, NAIC, or law enforcement authority; written agreement; responsibility of director.

Sec. 1355. (1) Except as otherwise provided in this subsection, the information, documents, and copies of documents obtained by or disclosed to the director or any other person in the course of an examination or investigation made under sections 1351 and 1357 and the information reported under sections 1324 to 1333 is confidential, is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, is not subject to subpoena, is not subject to discovery or admissible in evidence in a private civil or administrative action, and shall not be made public by the director or any other person, without the prior written consent of the insurer to which it pertains. The director may, after giving the insurer and its affiliates who would be affected by the disclosure notice and opportunity to be heard, disclose the information if the director determines that the interests of policyholders, shareholders, or the public will be served by the publication of the information. The director or a person who received documents, materials, or other information while acting under the authority of the director or with whom the documents, materials, or other information is shared under this act shall not testify in a private civil or administrative action concerning confidential documents, materials, or information obtained under sections 1351 and 1357 and information reported under sections 1324 to 1333.

(2) The director may share documents, materials, or other information, including the confidential and privileged documents, materials, or information obtained under sections 1351 and 1357 and information reported under sections 1324 to 1333 with other state, federal, and international regulatory agencies; the NAIC; and state, federal, and international law enforcement authorities, including members of a supervisory college under section 1357, if the regulator, the NAIC, or law enforcement authority agrees in writing to maintain the confidentiality and privileged status of the document, material, or other information and has verified in writing the legal authority to maintain confidentiality. The director may only share confidential and privileged documents, material, or information reported under section 1325a with commissioners of states having statutes or regulations substantially similar to subsection (1) and who have agreed in writing to not disclose the information. The director may receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information from the NAIC and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information. The disclosure or sharing of information, a document, or other material to the director or other person under this section is not a waiver of an applicable privilege or claim of confidentiality.

(3) Documents, materials, or other information in the possession or control of the department or the NAIC under this chapter are confidential and privileged, are not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, are not subject to subpoena, and are not subject to discovery or admissible as evidence in a private civil or administrative action. The director shall enter into written agreements with the NAIC governing sharing and use of information provided under this chapter. The written agreement must specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC and its affiliates and subsidiaries, including procedures and protocols for sharing by the NAIC with other state, federal, or international regulators. The agreement must provide that the director owns the information shared with the NAIC and its affiliates and subsidiaries and that the NAIC's use of the information is subject to the direction of the director. The agreement must provide for prompt notice to be given to an insurer whose confidential information in possession of the NAIC under this chapter is subject to a request or subpoena to the NAIC for disclosure or production, and require the NAIC and its affiliates and subsidiaries to consent to intervention by an insurer in a judicial or administrative action.

(4) The sharing of information by the director under this chapter is not a delegation of regulatory authority or rule-making, and the director is solely responsible for the administration, execution, and enforcement of the provisions of this chapter.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 2015, Act 244, Imd. Eff. Dec. 22, 2015.

Popular name: Act 218

500.1357 Participation of director in supervisory college.

Sec. 1357. (1) The director may participate in a supervisory college for a domestic insurer that is part of an insurance holding company system with international operations to determine the insurer's financial condition, business strategy, risk management, risk exposures, governance processes, regulatory position, or legality of conduct. The director may participate in a supervisory college with other regulators including state, federal, and international regulatory agencies, charged with the supervision of the insurer or its affiliates. The

authority of the director under this section includes, but is not limited to, initiating a supervisory college, clarifying membership and participation of other supervisors in the supervisory college, clarifying the functions of the supervisory college and roles of other regulators including establishing a groupwide supervisor, coordinating ongoing activities of the supervisory college, and establishing a crisis management plan.

(2) The insurer is liable for and shall pay the reasonable expenses for the director to participate in the supervisory college, including reasonable travel expenses, if the director considers it appropriate to require the insurer to pay these costs.

(3) The director may enter into agreements under section 1355 providing the basis for cooperation and sharing of confidential information with state, federal, and international regulatory agencies that regulate the domestic insurer or affiliates within the insurance holding company system. This section does not delegate to the supervisory college the authority of the director to regulate or supervise the domestic insurer or its affiliates within its jurisdiction.

History: Add. 2015, Act 245, Imd. Eff. Dec. 22, 2015.

Popular name: Act 218

500.1361 Issuance of rules and orders.

Sec. 1361. Upon notice and opportunity for all interested persons to be heard, the commissioner may promulgate rules and issue orders as are necessary to carry out the provisions of this chapter.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992.

Popular name: Act 218

Administrative rules: R 500.701 et seq. of the Michigan Administrative Code.

500.1365 Injunctions; violation of chapter, rule or order.

Sec. 1365. When it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed or is about to commit a violation of this chapter or of any rule or order issued by the commissioner, he may apply to the circuit court for the county in which the principal office of the insurer is located or if the insurer has no such office in this state then to the circuit court for Ingham county for an order enjoining the insurer or the director, officer, employee or agent thereof from violating or continuing to violate this chapter, rule or order and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders or the public may require.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970.

Popular name: Act 218

500.1367 Voting certain securities prohibited; injunction.

Sec. 1367. A security that is the subject of any agreement or arrangement regarding acquisition, or that is acquired or to be acquired, in contravention of this chapter or of any rule or order issued by the commissioner, shall not be voted at any shareholders' meeting or counted for quorum purposes and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though the securities were not issued and outstanding. An action taken at the meeting shall not be invalidated by the voting of the securities, unless the action would materially affect control of the insurer or unless so ordered by the court. If an insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of this chapter or of any rule or order issued by the commissioner, the insurer or the commissioner may apply to the Ingham county circuit court or to the circuit court for the county in which the insurer has its principal place of business to enjoin any offer, request, invitation, agreement, or acquisition made in contravention of sections 1311 to 1319 or any rule or order issued by the commissioner to enjoin the voting of any security so acquired, to void any vote of the security already cast at any meeting of shareholders and for other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors, and shareholders or the public may require.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992.

Popular name: Act 218

500.1368 Voting securities in violation of chapter; sequestration of securities.

Sec. 1368. When a person has acquired or is proposing to acquire any voting securities in violation of this chapter or any rule or order issued by the commissioner, the circuit court for Ingham county or the circuit court for the county in which the insurer has its principal place of business, on such notice as the court deems appropriate, upon the application of the insurer or the commissioner, may seize or sequester any voting securities of the insurer owned directly or indirectly by such person and issue such orders with respect thereto

as may be appropriate. Notwithstanding any other provisions of law, for the purposes of this chapter the situs of the ownership of the securities of domestic insurers is deemed to be in this state.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970.

Popular name: Act 218

500.1371 Violation of chapter; action by director; criminal proceeding; penalty; disapproval of dividends or distributions.

Sec. 1371. (1) An insurer that does not, without just cause, file a registration statement required under this chapter shall, after notice and hearing, pay a civil fine of \$1,000.00 for each day's delay, up to a maximum of \$50,000.00, to be recovered by the director and paid into the general fund. The director may reduce the penalty if the insurer demonstrates to the director that the civil fine would cause financial hardship to the insurer.

(2) Every director or officer of an insurance holding company system who knowingly violates, knowingly participates in or assents to, or with actual knowledge permits any of the officers or agents of the insurer to engage in material acts, omissions, or transactions or make investments that have not been properly reported or submitted under section 1324, 1341, or 1343, that, with respect to material transactions, violate this chapter, or that result in material false or misleading statements to the director with respect to the financial condition of the insurer or any of its affiliates shall pay, in their individual capacity, a civil forfeiture of not more than \$10,000.00 per violation, after notice and hearing before the director. In determining the amount of the civil forfeiture, the director shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations, and other matters as justice requires. In addition, a violation of this subsection is grounds for removal of a director or officer from a position of trust or responsibility in an insurer domiciled in this state in accordance with the procedures established in section 250.

(3) If it appears to the director that an insurer subject to this chapter or an insurer's director, officer, employee, or agent has engaged in a transaction or entered into a contract that is subject to section 1341 or 1344 and that would not have been approved had approval been requested, the director may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing, the director may also order the insurer to void the contract, transaction, or distribution, and restore the status quo if that action is in the best interest of the policyholders, creditors, or the public.

(4) If it appears to the director that an insurer or an insurer's director, officer, employee, or agent has committed a willful violation of this chapter, the director may institute criminal proceedings in the circuit court for the county in which the principal office of the insurer is located or, if the insurer does not have a principal office in this state, in the Ingham county circuit court against the insurer or the insurer's responsible director, officer, employee, or agent. An insurer that willfully violates this chapter may be fined not more than \$50,000.00. An individual who willfully violates this chapter may be fined not more than \$10,000.00 or, if the willful violation involves the deliberate perpetration of a fraud upon the director, imprisoned not more than 2 years, or both.

(5) An officer, director, or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made a false statement, false report, or false filing with the intent to deceive the director in the performance of his or her duties under this chapter, shall be imprisoned for not more than 2 years, or fined \$10,000.00, or both. The officer, director, or employee shall pay a fine in his or her individual capacity.

(6) If the director determines that a person violated section 1311 and the violation prevents the full understanding of the enterprise risk of the insurer by affiliates or by the insurance holding company system, the violation may serve as an independent basis for disapproving dividends or distributions and for placing the insurer under an order of supervision under chapter 81.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992;—Am. 2015, Act 244, Imd. Eff. Dec. 22, 2015.

Popular name: Act 218

500.1375 Violation of chapter; receivership.

Sec. 1375. If it appears to the commissioner that a person has committed a violation of this chapter that so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders, or the public, the commissioner may proceed as provided in chapter 81 to take possession of the property of the domestic insurer and conduct the insurer's business.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992.

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Popular name: Act 218

500.1377 Liquidation or rehabilitation; recovery of certain distributions or payments.

Sec. 1377. (1) If an order for liquidation or rehabilitation of a domestic insurer has been entered, the receiver appointed under the order shall have a right to recover on behalf of the insurer both of the following:

(a) From any parent corporation, holding company, or person who otherwise controls the insurer, the amount of distributions, other than distributions of shares of the same class of stock, paid by the insurer on its capital stock if made at any time during the 3 years preceding the petition for liquidation, conservation, or rehabilitation.

(b) Any payment in the form of an extraordinary bonus, termination settlement, or lump sum salary adjustment made by the insurer or its subsidiary to a director, officer, or employee if made at any time during the 3 years preceding the petition for liquidation, conservation, or rehabilitation.

(2) A distribution or payment shall not be recoverable under this section if the parent or affiliate or the director, officer, or employee shows that when paid the distribution was lawful and reasonable and that the insurer did not know and could not reasonably have known that the distribution or payment might adversely affect the ability of the insurer to fulfill its contractual obligations. If payments were made to more than 1 director, officer, or employee, this subsection shall apply to the aggregate of those payments.

(3) A person who was a parent corporation, holding company, or a person who otherwise controlled the insurer or affiliate at the time the distribution was paid shall be liable up to the amount of distributions or payments under subsection (1) that the person received. A person who otherwise controlled the insurer at the time the distribution was declared shall be liable up to the amount of distributions he or she would have received if they had been paid immediately. If 2 or more persons are liable with respect to the same distribution, they are jointly and severally liable.

(4) The maximum amount recoverable under this section shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

(5) To the extent that any person liable under subsection (3) is insolvent or otherwise fails to pay claims due from it pursuant to subsection (3), its parent corporation, holding company, or person who otherwise controlled it at the time the distribution was paid, is jointly and severally liable for any resulting deficiency in the amount recovered from that person.

History: Add. 1992, Act 182, Imd. Eff. Oct. 1, 1992.

Popular name: Act 218

500.1378 Failure by commissioner to act or make determination; petition for writ of superintending control.

Sec. 1378. A person aggrieved by failure of the commissioner to act or make a determination required by this chapter may petition the Ingham county circuit court for a writ of superintending control.

History: Add. 1992, Act 182, Imd. Eff. Oct. 1, 1992.

Popular name: Act 218

500.1379 Violation of chapter; suspension, revocation or refusal to renew license.

Sec. 1379. When it appears to the commissioner that any person has committed a violation of this chapter which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the commissioner, after giving notice and an opportunity to be heard, may determine to suspend, revoke or refuse to renew the insurer's license or authority to do business in this state for such period as he finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusion of law.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970.

Popular name: Act 218